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T. Prakash Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-01-1986

Reported in : ILR1987KAR1673; 1986(2)KarLJ165

Judge : Doddakale Gowda, J.

Acts : Karnataka Excise (Lease of the Right of Retail Vend of Liquors), Rules, 1969 - Rule 7 and 7(2)

Appeal No. : W.P. Nos. 8283 and 10283 of 1986

Appellant : T. Prakash

Respondent : State of Karnataka

Advocate for Def. : S.G. Sundaraswamy, Adv. for, ;M.R. Naik, ;R.N. Narasimha Murthy, Advs., ;N. Devadas, HCGP

Advocate for Pet/Ap. : K.R.D. Karanth, Adv.

Disposition : Petition allowed

Judgement :
ORDER

Doddakale Gowda, J.

1. Petitioner in first case has challenged the validity of auction proceedings, dated 2-5-1986, of Deputy Commissioner (Excise), Bangalore, disposing of right of retail vend of toddy in Bangalore District and provisional acceptance of bid offered by fourth respondent.

Petitioners in second case have challenged the validity of provisional acceptance of bid offered by twelfth respondent (who is no other than fourth-respondent in first Writ Petition) and for convenience, hereafter referred to as 'contesting respondent', in respect of retail vend of toddy and arrack at places mentioned in schedule to Petition including Bangalore District.

2. Though attack is as against provisional acceptance of bid offered by contesting respondent, they vary in form.

3. Brief averments in first case are :-

Commissioner of Excise, Karnataka, in Notification No. EXE. EXS-1-2/86-87, dated 16th April 1986 published in Karnataka Gazettee dated 17th April 1986 notified disposal of right of retail vend of toddy and arrack in Bangalore District for the year 1986-87 commencing from 1st of July 1986, in public auction by Deputy Commissioner (Excise), Bangalore, on 2-5-1986 subject to certain terms and conditions stipulated therein-Vide Annexure-A. Relevant clauses of this notification for decision of this case are :-

'1(a) Every intending bidder, shall deposit by way of earnest money a sum equal to one month's rent of the shop or group of shops of the Excise year 1985-86 in the form of a Demand Draft on a scheduled Bank in favour of the Deputy Commissioner/Excise Commissioner.

Provided that in the case of shops which were not in existence in the year 1985-86 earnest money deposit shall be five hundred rupees for each such shop.

(b) Persons who have not made such Earnest Money Deposit shall not be entitled to bid at the auction.

(c) The officer receiving such deposits shall issue a receipt for the earnest money deposited.

2. A person disqualified under Rule 7 of the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969 is not entitled to bid.

Intending bidders should produce valid Income-tax Clearance Certificate.

4(b) Names of the persons who have not deposited the earnest money required under condition l(a) above will not be included in the list.

(c) After such list is prepared, bids in respect of each shop or group of shops shall be invited.

11. The earnest money or other deposits made under the Karnataka Excise (Lease of Right of Retail Vend of Liquors) Rules 1969, unless forfeited or adjusted shall be refunded to the depositor.

12. On consideration of the records and in the interest of revenue, the State Government may pass an order confirming the disposal of the right of retail vend of Toddy/Arrack or refuse to do so. The orders issued will be forthwith communicated to the person concerned.'

It is averred that petitioner and other intending bidders went to Sir Puttanna Chetty Town Hall where auction was proposed to be held, to participate and bid for toddy shops in Bangalore District ; petitioner offered demand drafts of Rs. 57,75,000/- payable at Bangalore to Excise Commissioner drawn from Branches of scheduled Banks situate in Bangalore as well as outside Bangalore, particulars of which are mentioned in Annexure-E produced along with reply statement. But, third respondent refused to accept demand drafts as few of them were not obtained from Bangalore Branches as required by Commissioner's letter, dated 24-4-1980 (Annexure-B). Letter reads thus :

'--During the ensuing auction in order to avoid production of fictitious Demand Drafts to the authorities, it is proposed to accept the demand drafts drawn in favour of the Excise Commissioner issued from any of the scheduled Banks

situated in Bangalore and wherever the Demand Drafts are drawn in favour of the Deputy Commissioner, such demand drafts should have been obtained from any of the scheduled Banks situated in the concerned Districts.

The Deputy Commissioners are advised to check the authenticity of issue of such demand drafts from the concerned Banks in case of any doubt.

The above instructions may be followed strictly,

Yours faithfully,

Sd/-

No. EXE. EXS. 158/85-86. Office of the

Deputy Commissioner

(Excise), Bangalore

District, Dated : 29-4-1986

MEMO

Copy of the above is forwarded to the Inspectors of Excise of all the Ranges of Bangalore District, for information and needful action.

Sd/-

For Deputy Commissioner,

(Excise) Bangalore District.'

4. Referring to Writ Petitions filed by C.V. Subba Rao and others who made similar grievances, it is stated that apprehending Deputy Commissioners of various Districts are likely to reject demand drafts obtained from Branches other than places in respect of which auction was required to be held they moved this Court for redressal. This Court taking Writ Petition No. 7770 of 1986 out of turn, having regard to urgency, made an interim order, staying the operation of the above letter

on 2-5-1986 during vacation which is communicated to respondents 2 and 3 through telegram at 10-20 a.m.-vide order sheet of that case. Similar interim orders are made in Writ petitions Nos. 8064 of 1986 and 8068 to 8080 of 1986. This Court, in addition to staying the operation of said letter, directed respondents to accept demand drafts drawn in favour of Excise Commissioner/ Deputy Commissioner purchased in any of the scheduled Banks by petitioners whenever they participate in public auction of right of retail vend of liquors (toddy and arrack) to be held from 2-5-1986 and onwards, pending disposal of those Writ petitions; but, this interim order was not communicated to third respondent-Deputy Commissioner (Excise) before commencement of auction and he conducted auction in conformity with the direction contained in above letter. It is alleged that on production of earnest money deposit of Rs. 57,75,000/- as three demand drafts worth Rs. 7,75,000/-were drawn from outside Bangalore Branches, Deputy Commissioner declined to accept his offer pursuant to direction contained in Annexure-B. On exclusion of petitioner and others similarly situate, bid offered by fourth respondent offering to purchase right of vend of toddy for Rs. 52,31,000/- has been provisionally accepted. Rejection of his offer has resulted in infringement of his right to participate and also loss of revenue to State.

5. Next ground urged is that fourth respondent is a defaulter owing large sums of excise due to the State and as per particulars furnished in reply, fourth respondent is due a sum of Rs. 4,53,49,580/- as shop rentals from Bangalore District and Rs. 3,27,94,983-02 ps. from Districts of Chitradurga, Dharwad, Shimoga, Hassan, Chickamagalur, Uttara Kannada, Tumkur, Mysore and Kolar, as per defaulters list announced by Deputy Commissioners of those Districts-vide Annexures D to D9 and nearly Rupees Two Crores by way of Sales-tax on sales of liquor ; even if there are interim orders of stay, recovery alone is deferred but will not remove disqualification suffered under the Rule. It is contended that a defaulter under the Rule is ineligible to participate and State cannot afford and should not entrust the right of distribution of toddy of value of over Rupees Six Crores to a defaulter. Thus, it is contended that auction held is not in conformity with the Rules governing auction and participation of fourth respondent vitiates auction proceedings and provisional acceptance of bid made by a defaulter is illegal and without jurisdiction.

6. Respondents 1 to 3 in their counter deny offer made by petitioner including his participation at the auction. Sri N. Devadas, learned High Court Government Pleader, submitted that though Deputy Commissioner had not received interim order of this Court before commencement of auction, still he did not insist for adherence of direction contained in Annexure-B. They dispute the correctness of allegations that Deputy Commissioner rejected offer of demand drafts drawn on different branches of scheduled Banks situate outside Bangalore and assert, few of bidders were permitted to participate offering demand drafts obtained from Branches other than Bangalore Branches.

They admit certain amount is due from fourth respondent; but justifying participation of fourth respondent in auction, state that on account of various interim orders passed by this Court in different Writ Petitions, Writ Appeals and STRPS, recovery is stayed in respect of certain amount and for the remaining amount Commissioner has granted time for payment up to the end of June 1986, hence not treated or considered as defaulter. Further, it is stated that fourth respondent is solvent and has agreed to pay arrears of rental for the year 1984-85 and authorities were satisfied about chances of recovery.

7. Fourth respondent, in return, pleading for dismissal on the ground of laches and lack of bona fides contends that interim order of this Court in Writ Petition No. 7770 of 1986 was received by Deputy Commissioner (Excise) Bangalore at 9-15 a.m. and on receipt of such information, second respondent instructed Deputy Commissioner not to insist upon production of demand drafts from Bangalore Branches alone; on receipt of such information, intending bidders were permitted to participate in auction offering demand drafts obtained from Branches other than Bangalore City. In addition to subscribing to defence of respondents 1 to 3, plea of disqualification is met thus :-

'Arrears referred to at 2nd item perhaps refers to amounts that have been covered by stay orders made in W.P. 13091/82, 11548/83 and connected matters, as well as W.P. 1619/85 and 1065/84 and Writ Appeals 7010 to 7015 of 86, Most of the amounts are covered by stay orders and some amount involved in those petitions have already been paid and some small amounts that remain to be paid are also

permitted to be paid by the end of June 1986 by an order of the 2nd Respondent dated 1-4-86. Respondents have power under the Excise Act to enable Excise Contractors to make belated payments on their being satisfied of the disputes and difficulties.'

It is further stated that dispute is pending before this Court in STRP 4344 of 1986 and Writ Petitions Nos. 7534 to 7545 of 1986 and there is an interim order staying recovery of tax.

WRIT PETITION NO. 10283 of 1986:--

8. Petitioners state that it is in the nature of public interest litigation. Relying on Rule 7 (iii) of Karnataka Excise (Lease of Right of Retail Vend of Liquors) Rules, 1969 (hereinafter referred to as the 'Rules') submit that 12th respondent is disqualified as a proclaimed defaulter from participating in auction and acceptance of bid of such person is illegal and ultra vires apart from not being in public interest. They submit that it is impermissible for respondents to dispense with enforcement of this Rule to any individual or group of individuals or ignore this Rule. They contend that respondents 1 to 11 who are aware of non-payment of shop rentals and sales-tax committed an error in permitting contesting respondent to participate in auction and provisionally accepting his offer to vend retail toddy and arrack at places mentioned in schedule; respondents should not have permitted him to participate in various auctions held in different parts of State ignoring lists of defaulters published by Deputy Commissioners of various Districts mentioned in Annexure-B to B8 and C. Furnishing particulars of various amounts due for different periods, they allege that a sum of Rs. 7,81,44,563/-is due as excise dues and Rupees 2.50 Crores towards sales-tax on liquor. They contend that when a thing is required to be done in a particular manner, if not done entire act gets vitiated; eligibility being an essential condition for participation in the auction, permission accorded by Deputy Commissioner and Excise Commissioner to participate in auction held in various parts of the State is clearly violative of Rule 7 of the Rules. They also submit that if auction had been held in accordance with law, it would have secured more revenue to State. They contend that acts of Excise Commissioner and his subordinates permitting a forbidden defaulter from

participating in auction is against interest of State. As citizens they question executive action as ultra vires and acceptance of bid of such person is prejudicial to public revenue.

9. Respondents 1 to 11 have not filed any separate statement of objections in this Writ Petition.

10. Respondent-12 in return disputing locus standi of petitioners, to question acceptance of his bid, contend that petitioners lack bona fides and are instigated by disgruntled persons who are on Chemicals terms with him with a view to harass him. This is what is stated regarding arrears :-

'It is true in some of the published defaulters' list, this respondent's name is shown and certain amounts are shown as dues but when it was pointed out that amounts shown therein pertain to amounts, payments of which are disputed and are subject matter of various Writ Petitions and revisions and are covered by stay orders made therein, the excise authorities exercising power under Sub-rule (2) have correctly not disqualified this respondent and have permitted him to participate in the auctions.....'

Referring to particulars of dues mentioned in Annexures-B, C and D, it is stated thus :-

'In the said statements amounts shown against Excise contracts for Excise year 1982-83 and 83-84 pertain to amounts that were stayed being rentals for period of compulsory closure and said amounts were covered by interim orders of stay made in Writ Petitions Nos. 38091/82, 11548/83, 17755/83, 7984/83, 7986/83, 7988/83, 7990/83, 1630/83 and 15346 to 349/83. Special Leave Petitions have been pending before Hon'ble Supreme Court and authorities have not raised demands of these sums payments of which are disputed. As regards amounts shown against Excise contracts for the year 1985-86, they are the amounts payments of which are disputed and payments of said sums have been stayed by this Hon'ble Court in Writ Appeals 7010 to 7015/86. Similarly in respect of Dharwar Districts as per Annexure-B1, amounts shown for excise year 82-83 and 83-84 pertains to disputed amounts of rentals for period of compulsory closure and

enhancement of interest rate, while amounts shown in respect of 85-86 again pertain to amounts stayed in Writ Appeals 7010 to 7015/86 wherein 1/4 of the kist payable is stayed for short non-supply of arrack. Similar is the position at Annexure-B2 items 8, 13 and 14 All the amounts shown to be due therein are amounts, collection of which are been stayed by this Hon'ble Court in W.Ps. 13467 to 13472/86 and Writ Appeals 7010 to 7015/86. So is the position in respect of Annexure-B3 Hassan District and amounts shown are covered by Writ Petitions and Writ Appeals as mentioned above. Similar is the case in respect of Annexures-B4, B5, B6, B7 and B8 and C sums shown as dues which for the excise year 85-86 are the sums which have been stayed by the Hon'ble High Court in cases as mentioned above. In respect of disputed amount of interest also certain cases are pending before this Hon'ble Court and in those cases this respondent has obtained interim orders staying payments of disputed amount. Even in respect of sales tax on toddy, they having been challenged and stayed in STRP 43 and 44 of 86 and W.P. 7534 to 45/76, the amounts shown at Annexure-C are mentioned in para 10 of the Writ Petition are not due and does not make this respondent disqualified in terms of Rule 17 of the Rules. Thus, as could be noticed, amounts shown as dues are really amounts that are disputed and are pending consideration by this Hon'ble Court and the Hon'ble Supreme Court. The Deputy Commissioners who have published Annexures-B1 to B8 produced have not applied their mind and have erroneously shown amounts as due and this respondent as a defaulter. These published list not having any statutory force, they being not prepared under the provisions of any Rules cannot be relied upon to disqualify this respondent in terms of Rule 7 of the Rules.....Thus almost all amounts that have been referred in Annexure-B series and Annexure-C are covered by interim orders or they are subject matters of petitions pending before this Hon'ble Court and the Hon'ble Supreme Court. When these aspects were brought to the notice of authorities, respondents realising that defaulters list was erroneous did not disqualify this respondent as it does not amount to disqualification in terms of Rule 7(3) of the Rules.'

(underlining is of mine)

11. Points that emerge for consideration are :-

1. Whether petitions are liable to be dismissed on the ground of laches and lack of bona fides ?

2. Whether Circular, Annexure B, dated 24-4-1986 is valid If so, whether petitioner has been denied equality of opportunity to participate in auction held on 2-5-1986 in disposal of right of retail vend of toddy in Bangalore District ?

OR

Has it been withdrawn as contended by contesting respondent before commencement of auction ?

3. Whether petitioner did attempt to participate in auction or not If not, whether he can question provisional acceptance of bid by third respondent ?

4. Whether fourth respondent is disqualified from participating in auction as per Rule 7(iii) of the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969 ?

5. Whether a dispute of this nature can be adjudicated as public interest litigation ?

12. For proper appreciation of rival contentions, it is better to have a birds eye view of provisions governing auction.

Rule 3 of the Rules provides mode of disposal of right of retail vend of liquors (i) by tender; (ii) by auction; (iii) by tender-cum-auction; and (iv) in any other manner as the State Government may, by order, specify. Right of retail vend of toddy and arrack disposed under these Rules shall be exclusive right except in such District as may be specified by Government. Rules 4 and 5 provides for notification and manner of submission of tenders. Every tender shall be accompanied by an Earnest Money Deposit of an amount equal to one month's rent of each shop or group of shops in the previous year. Such deposit shall be made in the form of demand draft on a scheduled bank, in favour of Deputy Commissioner or Divisional Commissioner, or Excise Commissioner, as the case may be [Rule 5(6)].

Rule 7 of the Rules reads thus :

'7. Disqualification : (1) A person shall be disqualified from submitting a tender, if he :

(i) is a minor or an undischarged insolvent or is of unsound mind ; or

(ii) is holding an Office of profit under the State Government or Central Government ; or

(iii) has not paid the arrears of excise dues or sales tax in respect of liquor sold by him ; or

XX XX XX(2) A person shall not be disqualified under Clause (iii) of Sub-rule (1) if he produces a certificate from a competent Revenue, Excise or Commercial Tax Officer to the effect that the arrears have been paid.'

As per Rule 11, Deputy Commissioner is required to prepare a list of intending bidders in respect of each shop or group of shops to be auctioned. Only persons included in such list shall be permitted to bid. No person shall be included in such list if (a) he is a person disqualified from submitting a tender; and (b) he has not deposited the earnest money at the rates and in the manner specified in Sub-rule (6) of Rule 5. Bides offered shall be recorded in such list -vide Sub-rule (5) of Rule 11. After recording of bids in accordance with Sub-rule (3) of Rule 11, provisional acceptance of highest bid is made either by Deputy Commissioner or T. Prakash v. State of Karnataka 1687 Divisional Commissioner, as the case may be -- vide Rule 11(7). Sub-rule (1) of Rule 13 provides for deposit of one month's rent of the shop or group of shops together with earnest money deposited on acceptance of bid. Sub-rule (2) provides for contingency, in case of default, to deposit earnest money by successful bidder. Sub-rule (3) states that a defaulter is ineligible for participation at re-auction. Rule 20 provides for refund to depositors unless forfeited or adjusted.

LACHES AND LACK OF BONA FIDES :-

13. One of the grounds on which relief is resisted is laches. Plea of petitioner is that he was unaware of Circular, dated 24-4-86 of Excise. Commissioner as it is neither published nor communicated to Contractors in the field and became aware

of it only on the eve of auction when third respondent refused to accept his offer, as all demand drafts furnished by him were not from Branches of scheduled Banks situate in Bangalore. It is submitted that this Court granted an interim order of stay at about 10-20 a.m. on 2-5-1986 staying its operation in Writ Petition No. 7770 of 1986 and interim orders of like nature are made in Writ Petition No. 8064 of 1986 on 3-5-1986 and in Writ Petitions Nos. 8068 to 8080 of 1986 on 5-5-1986. This Court, in addition to staying its operation directed Deputy Commissioner (Excise) of all Districts to accept demand drafts purchased from any branches of scheduled Banks whenever they participate in public auction to be held from 2-5-1986 and onwards. Submission of petitioner is that, as third respondent had not received interim order made on 2-5-1986 by 10 a m. i.e., before commencement of auction proceedings, adhering to instructions contained in Circular, rejected demand drafts furnished by him as some of them were not from Bangalore Branches. Writ petition No. 8064 of 1986 filed by G.V. Subba Rao though dismissed as withdrawn, other Writ Petitions still remain undisposed off Petitioner, in his objection to I.A.I., states that obviously Sri Subba Rao has withdrawn Writ Petition No. 8064 of 1986 as not pressed at the instance of fourth respondent. These interim orders are made during vacation by learned Vacation Judge. This Writ Petition is filed on 26-5-1986, a day prior to reopening of Courts, after summer vacation. Explanation offered is that in view of interim orders in other cases, there was no urgency to move vacation Court and added to that auction in respect of Bangalore was over awaiting confirmation. Explanation offered for delay in approaching this Court is satisfactory, reasonable and well-founded and petition, cannot be thrown out solely on the ground of laches.

14. Further, main grievance of petitioner is denial of equal opportunity to participate in auction held on 2-5-1986, Whenever litigants complain denial of equality of treatment or equal protection of laws, normally, Courts will be slow to dismiss Writ Petition on ground of laches unless prejudice caused to adversary is established.

15. Learned Counsel for petitioner relying on observation of Supreme Court in Bhooma Reddy's case, : [1969]3SCR14 which states that purchase will not be illegal, merely because bidder obtains necessary funds, from some financier,

submitted it is suffice if he establishes that he was in possession of necessary drafts to offer them as Earnest Money Deposit, even financed by others. Particulars of demand drafts, which the petitioner had, are furnished in Annexure-E. Rule 5 (6) requires deposit of earnest money an amount equal to one month's rent of each shop or group of shops of previous year. It is submitted that rent for retail sale of toddy in Bangalore District in previous year was Rs. 52.1 lakh and hence, he had necessary requirement for participation in auction. It is only after provisional acceptance persons whose bid is accepted are required to make a deposit of one month's rent in addition to earnest money already made - vide Rule 13.

16. In second case, challenge is made by petitioners stating that they are interested in safeguarding public revenue and in the light of catena of decisions of Supreme Court on 'public interest litigation', they are entitled to challenge provisional acceptance of bid as arbitrary, unreasonable and opposed to Act and Rules governing auction. Relief is resisted stating that they are not genuinely interested in safeguarding public revenue or loss of revenue to State, but are instigated by disgruntled persons on account of trade rivalry. Bare allegations that they are instigated by others may not, by itself suffice to dismiss Writ Petition on the ground of lack of bona fides. So long as they profess as citizens, maintenance of rule of law and or to prevent loss of public revenue, petition cannot be dismissed on ground of lack of bona fides. Whether an issue of this nature can be agitated as a public interest litigation or not is a matter de-hors bona fides which will be dealt with a little latter. Prayer made to direct respondents 1 to 11 to adjust amount now deposited as earnest money towards arrears being in consonance with Rules 19 and 20 of the Rules, by itself will not smack malice. Hence, the plea that petitions lack bona fides is rejected.

RE. DISQUALIFICATION :-

Three facets canvassed by Sri R. N. Narasimha Murthy, learned Counsel on fourth point are : (i) Rule 7 (iii) does not cover cases of bona fide disputes ; (ii) rule is not mandatory and is only directory ; and (iii) amount due not being an 'excise dues' within the meaning of this Rule, contesting respondent suffered no disqualification.

These are dealt in their seriatim.

17. Contesting respondent himself admits in statement of objections that certain amounts are due. His case is that there is an interim order, in respect of some, by this Court in various Writ Petitions and for the rest, Excise Commissioner has extended time for payment up to end of July 1986. Validity of demand for payment of rentals for compulsory period of closure, was the subject matter in Anjanappa v. State of Karnataka : ILR 1985 KAR1772 and in Raja Mallaiah v. State of Karnataka : ILR 1985 KAR1802 . This Court has concurrently negatived the contention that Excise contractors arc not liable to pay rental for compulsory period of closure. Supreme Court is seized of the matter as Division Bench of this Court has granted Certificate of Fitness to file appeals to Supreme Court, but, there is no interim order by Supreme Court staying recovery.

Other claim relates to pro-rata deduction of liability depending upon non-supply or short-supply of arrack by bottlers. This Court, it appears, granted stay for payment of one-fourth of kist for the period of short-supply/non-supply. Writ petitions having been dismissed, interim order on like terms is made in Writ Appeals. Thus, contesting respondent admits that there is no stay for recovery of all the amounts due. Notification issued by various Deputy Commissioners declaring contesting respondent as defaulters are not challenged,, though he admits knowledge of these notifications in statement of objections filed in second case and contended that they have no statutory force.

Contesting respondent in his application dated 19th March 1986 has requested Excise Commissioner to extend time for payment explaining how dues have accrued and reasons for non-payment of such arrears. Letter reads thus :

'The Excise Commissioner,

Bangalore.

Dear Sir,

Sub : Grant of instalments for payment of

Rentals arrears.

Due to closure of shops for nearly 29 days in some places and upto 12 to 15 days in some places consequent on the death of former Prime Minister in October 1984 and also parliamentary elections. Assembly Elections and other disturbances, during the Excise Year 1984-85. we had obtained stay and that was subsequently vacated and the matter has been appealed to Supreme Court. Consequent on the dismissal of our Petition in the High Court, the superintendents of Excise of different districts where we had our contracts have been pressing for payment of rentals of 1984 85. We have already cleared the guarantee liabilities completely. Because of this unforeseen situation and persistent drought conditions, the rentals were not paid during 1984-85 and compulsory closure of shops for such an unprecedented long time, we have had to incur heavy losses during the year. However, pending disposal of our appeals in Supreme Court, we would like to clear the outstanding rentals in easy instalments under protest and subject to adjustment against future rentals etc consequent on the judgment of the Supreme Court if held in our avour We therefore, request you to please favour us in granting easy instalments for payment of rentals arrears and instruct the Superintendents of Excise not to enforce recovery under Revenue Recovery Proceedings and render justice.

Yours faithfully,

For H. DASAPPA AND SONS,

Sd-

MANAGING PARTNER'

It is on this application, Commissioner has ordered to clear arrears of 1984 by the end of June 1986 positively. Extension is restricted to payment of dues for compulsory period of the year 1984-85 and there is no stay or extension of time for payment of arrears for the earlier periods. Words used in this letter are to be taken most strongly against the party using them in order to reach the conclusion that he is a defaulter applying principles embodied in maxim verba chartarum fortious

accipiuntur contra proferentem. Though petitioners state that crores of rupees are due neither state in statement of objections nor contesting respondent has furnished actual amount due either as shop rental or tax due on sales of liquor, amounts covered by stay and not covered by stay orders. For the sake of mere dispute if liability is disowned whether contentious or otherwise, it is impossible to accept the plea that rule does not cover cases whenever liability is disputed.

18. Sri Narasimha Murthy drawing my attention to Sections 17(3), 28, 63 and 64 of the Karnataka Excise Act (hereinafter referred to as the 'Act') contended that in view of machinery provided for recovery of arrears due to Government and safety to public revenue, Clause (iii) of Rule 7 of the Rules must be treated as directory and not mandatory. Sub-section (3) of Section 17 of the Act provides for determination of lease, if duty or fee payable by the lessee is not duly paid, commits any breach of terms or conditions of lease and has become incapable of carrying on business. Section 63 states that all excise revenue, any loss that may accrue, when in consequence of default, a lease under Section 17 has been taken over under management by Deputy Commissioner or has been re-sold by him, and of amounts due to Government by any person on account of any contract relating to the excise revenue, may be recovered from the person primarily liable to pay the same or from his surety, if any, as if they were arrears of laud revenue. Section 64 creates a first charge upon property belonging to defaulter. These are all machinery provisions providing mode of recovery of amount due to State.

In addition to machinery provided for recovery, it is open to Legislature to prohibit, a defaulter from participating in auctions or to become a lessee until arrears due to State are cleared. Machinery provided for recovery of State dues has no bearing on eligibility or qualification prescribed for participation in auction. Tenor of this rule, by indicating 'a person shall be disqualified from submitting a tender' read with Sub-rule (2) of this rule, which removes disability on production of a Certificate from Competent Revenue Excise Authority or Commercial Tax Officer to the effect that arrears have been paid, makes it clear, so long as intending bid der is in arrears, he is disqualified to participate in auction. Contention that Clause(iii) of Rule 7 is directory, if accepted, Sub-rule, (2) of Rule 7 would become redundant.

One other way of testing whether it is mandatory or directory is to apply some test to disqualification prescribed in Clauses (i) and (ii) where a minor or an undischarged in. solvent or unsound mind and a person holding Office of profit under the State Government or Central Government are prohibited from participation. Part of the rule prescribing qualification cannot be treated as directory and other portion as mandatory. If Clause (iii) is considered as directory, a fortiori other clauses will also be considered as directory, in which case a minor or an undischarged insolvent or unsound mind and a person holding office of profit under the State Government or Central Government will all be eligible for participation resulting in absurdity.

Phraseology of this rule is similar to Article 191 of the Constitution of India. Qualification prescribed for a citizen to become a member of Legislative Assembly or Council cannot be held to be directory merely on the ground a provision is made in Representation of People Act of 1951 to question the validity of election of returned candidate. Qualifications of this nature are prescribed under Municipalities Act or Local Boards Act for a person to become a Councillor and a Member in Local Board. Such prescription of eligibility or qualification is never considered as directory and on the other hand held to be mandatory.

19. Third facet is that rental or tax due is not 'excise dues'. In view of decision of Supreme Court in State of Haryanav.Jage Ram, AIR 1980 SC 2018 explaining nature of payment made for purchase of privilege of vend of liquor 'as neither a fee nor excise duty on undrawn liquor, but a price of privilege which State has parted in their favour,' no further elucidation was necessary on this aspect. However, as learned Counsel for contesting respondent in both these cases, drawing distinction between excise duty, excise revenue and excise dues, vehemently urged that excise revenue is not excise due, it has become necessary to deal with this aspect and connotation of these words as spelt out in various decisions. 'Excise Revenue' is defined to mean, revenue derived or derivable from any duty, fee, tax, rent, fine on confiscation imposed or ordered under the provisions of this Act or any law for the time being in force relating to liquor or intoxicating drugs - [Section 2(11)].

Section 24 states that notwithstanding anything contained in Sections 22 and 23, the sum accepted in consideration of the grant of any lease relating 10 any excisable article under Section (sic), shall be the excise duty or countervailing duty payable in respect of such excisable article in addition to any duty payable under Sections 22 and 23.

20. Sri R.N. Narasimha Murthy and Sri S. G. Sundaraswamy, learned Counsel, drawing attention to definition of words 'Excise revenue', 'Excise duty' and deeming provisions contained in Section 24 and 'Excise due' found in Clause (iii) of Rule (sic) contended that 'Excise Revenue' not being 'Excise dues' contesting respondent incurred no disqualification under this Rule. No doubt, there is no definition of 'Excise dues'. Etymologically all matters dealing with liquors, foreign or country, is familiarly known by the term 'Excise.' An 'Excise' in its original sense, was something cut off from the price paid on a sale of goods as contribution to the support of the Government, but in its broader meaning it includes every form of taxation which is not a burden laid directly upon persons or property - See: Words and Phrases-Volume 15A. 'Amount payable as duty levied at the time of manufacture or production, tax on sales of liquor, fee or rental collected for parting with the monopoly of the State are all considered as Excise revenue, non-payment of which is called as Excise due. 'Due' as defined in Black's Law Dictionary, Fifth Edition 'always imports a fixed and settled obligation' or 'liability', 'debt enforceable'. 'Excise revenue' as defined includes rental. 'Excise due' is a compendious term including 'Excise duty', 'Excise revenue' and any liability pertaining to Excise. Therefore, the shop rental due cannot be anything de-hors 'Excise due'.

21. Learned Counsel for contesting respondent relying on Shinde Brothers v. Deputy Commissioner, Raichur, : [1967]1SCR548b D. Cawasji and Co., v. State of Karnataka and Ors., 1968(2) KLJ 78 and State of Karnataka v. D. Cawasji and Co., : [1971]2SCR799 urged that though definition of 'excise revenue' includes rent, it is not excise dues, hence assuming for the sake of argument that certain amount is due, still he has not suffered disqualification.

Question involved in first case was whether Karnataka Health Cess Act was valid and if the Act was valid did it empower levy of health cess on shop rent because shop rent did not fall within Schedule-A of the impugned Act or Entry 51 of List II. Supreme Court after referring to decisions in R.C. Jall v. Union of India, : AIR 1962 SC1281 , In Re-Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 . Province of Madras v. B. Paidama and Sons AIR 1942 FC 33 and Governor General in Council v. Province of Madras held thus :-

'23. In view of these characteristics, can it be said to be an excise duty In our opinion the answer is in the negative. The taxable event is not the manufacture or production of goods but the acceptance of the licence to sell. In other words, the levy is in respect of the business of carrying on the sale of toddy. There is no connection of any part of the levy with any manufacture or production of any goods. To accept the contention of the State would mean expanding the definition of 'excise duty' to include a levy which has close relation to the sale of excisable goods. It is now too late in the day to do so.'

'30. In the result, we hold that the health cess sought to be levied under the impugned act on shop rent does not fall within Item I of Schedule A of the impugned Act or Entry 51, List II of the Constitution.'

Relevant provisions referred to are Karnataka Excise Act (Act 5 of 1901) and Karnataka Health Cess Act, 1962 - vide paras 8 and 13 of the judgment.

Question involved in second case was whether education cess under Karnataka Elementary Education Act can be levied on shop rent. In this case, learned Counsel agreed that according to the original Schedule of the Education Act, Education Cess was leviable only on those items on which local cess was being levied when the Education Act was enacted in the year 1941. Likewise, it was agreed that according to schedule to Education Act, as amended in the year 1955, Education Cess is leviable only on those item of land revenue, forest revenue and excise revenue on which education cess was being levied when the Elementary Education Amendment Act, 1955, came into force. The learned Government Pleader did not dispute that education cess was not being levied on arrack shop rent till the year 1965 but for the first time stated in notifications of sale of excise

privilege for the year 1966-67 that education cess should be paid on arrack shop rent and beer shop rent. Conclusion reads thus :-

'Thus the contention of the petitioners that the provisions of the Education Act as amended from time to time, do not impose a charge of education cess on arrack shop rents, beer shop rent and toddy shop rent, tree tax and tree rent, is well founded.'

at page 92, it is held thus :-

'He also referred to Section 2(11) of the Mysore Excise Act, 1965, in which the definition of 'Excise Revenue' is the same as in the 1901 Act. The Learned Special Government Pleader further argued that even if shop rent is not a duty of excise, it is still one of the items of excise revenue on which the Education Act levies Education Cess ; that there is material difference between the language of Section 3 of, and Schedule A to, the Health Cess Act, and the language of Section 9 of, and the amended schedule to, the Education Act and hence the observation of the Supreme Court in Shinde Brothers' case regarding the nature and scope of Health Cess have no application to Education Cess.

Though Clause (ii) of Section 3 of the Health Cess Act mentions items of State revenue, Schedule A to that Act refers only to duties of excise and not to excise revenue. But in the amended schedule to the Education Act the items referred to are land revenue, forest revenue and excise revenue. We think, the Learned Special Government Pleader is right in contending that the scope of the amended schedule to the Education Act, is wider than that of schedule 'A' to the Health Cess Act, and 'that under the Education Act the levy of Education Cess is not confined to duties of excise only, but extends to items which are not duties of excise but still come within excise revenue.'

Negativing the plea of protection to Article 227 of the Constitution of India and levy as taxes on luxuries including taxes on entertainments, amusements, betting and gambling under Entry 62 of List II, held that Education Act does not impose charge of education cess on arrack shop rent, toddy shop rent, or beer shop rent, tree tax or tree rent. Sum and substance of finding is that shop rent is not a duty on excise

and hence education cess cannot be levied on arrack shop rent.

Supreme Court in appeal reported in Cawasji's case : ILR 1985 KAR1802 negatived the plea that it is a tax under Entry 8 of List II. Power to tax must be derived from a specific taxing entry and tax could therefore, not be levied on intoxicating liquor relying upon Entry B of List II. Contentions urged and finding is found at para 9 of the order. It reads thus :-

'Mr. Chagla for the State urged that the High Court was in error in holding that 'shop-rent' was not excise revenue. But this question is concluded by a judgment of this Court. In Guruswamy & Co., v. State of Mysore, : [1967]1SCR548b this Court held that the Mysore State Legislature was incompetent to levy health-cases on the items of the State excise revenue. The Court further held that the levy of health-cases could only be made if it be shown that the duty had been levied on goods which had been produced or manufactured, the taxable event being production or manufacture of goods. The Court observed that the essential characteristics of an excise duty was uniformity of incidence, and that the duty must be closely related to production or manufacture or goods. It did not matter if the levy was made not at the moment of production or manufacture but at a later stage. If a duty had been levied on an excisable article, but the duty was collected from a retailer it did not necessarily cease to be an excise duty. If a levy was made for the privilege of selling an excisable article and the excisable article had already borne the duty and the duty had been paid, there must be clear terms in the charging section to indicate that what was being levied for the purpose of the privilege of sale was in fact a duty of excise. The Court further held that a payment for the exclusive privilege of selling toddy from certain shops was called shop rent. The licencee paid what he considered to be equivalent to the value of the right and it had no relation to the production or manufacture of toddy, and that the 'shop-rent' was not excise duty within the meaning of Entry 51 of List IT of the Constitution. We are bound by this judgment. 'Shop-rent' is accordingly not excise revenue within the meaning of the Schedule to the Mysore Elementary Education Act. 1941 and no education cess could be levied on 'shop-rent.'

(underlining is of mine)

Object of extracting points urged and conclusions reached is to demonstrate that there is no similarity between those cases and present cases. Supreme Court in first case, : [1967]1SCR548b held that shop rent is not a duty on excise and hence no health cess can be levied. In Cawasji's case, : [1971]2SCR799 , as could be seen from the underlined portion Supreme Court held that shop rent is not excise revenue within the meaning of Schedule to Elementary Education Act and no education cess can be levied on shop rent. There was no occasion either for Supreme Court or for this Court to decide the scope or validity of Excise revenue as defined in the Act including shop rental as excise revenue.

22. Object of Rule 7 disqualifying a defaulter from participating in auction, in addition to machinery provided for recovery is to control and combat the thorny problem of mounting excise arrears and poor collection, and is based on the principle 'prevention is better than cure'. Contractors who deal with excise are aware of existence of rule which prescribe the eligibility and condition in notification which States that no defaulter shall be allowed to offer his bid. Under Sub-rule (3) of Rule 13 of the Rules, a defaulter is prohibited from submitting a tender or to make offer or to bid at the re-auction. Sub-rule (2) of Rule 7 enables a defaulter to pay the arrears and to participate on production of clearance certificate. Emphasis is on the interest of public revenue which is regarded as paramount consideration. Rule prescribes that a chronic defaulter, who has no intention of honouring his obligation under the Act should not be permitted to participate and if such person is allowed to participate, he is likely to raise the bid with impunity and outbid genuine bidders. 'A kind of Gresham's law would then operate : the bad bidder would drive out the good and public as well as private interests would suffer.'

23. Last submission made on this aspect is that in view of extension of time for payment by Commissioner, contesting respondent is eligible to participate. Extension of time only defers recovery. As has already indicated, time is extended for payment of dues of the year 1984-85 and no time is extended for payment of arrears that have accrued from 1982-83. Neither Excise Commissioner nor the Executive can defeat the object of rule which disqualifies a defaulter from participation by extending time for payment. If that plea is accepted, it tantamounts

to permit them to vary those rules or to defeat the object of these rules. Hence, no shelter can be derived from the order of Excise Commissioner extending time for payment, assuming he has got power.

RE: VALIDITY OF CIRCULAR ANNEXURE-B.

24. Sri K.R.D. Karanth, learned Counsel for petitioner, drawing my attention to various provisions of the Act and Rules and Clause (1) of notification contended that neither Act nor Rules authorise Excise Commissioner to issue such Circular. Assuming for the sake of argument that he has got such power, it cannot be enforced without publication or notice to Contractors in the field just on the eve of commencement of auction. Commissioner can issue directions to his subordinates in conformity with the policy and purpose of the Act as a Chief Controlling Authority. There is no provision either in the Act or Rules to impose such onerous condition. Clause (1) of the Notification (Annexure-A) has not restricted purchase of demand drafts from particular branches. Bidders had option of purchasing demand drafts from any branches of the scheduled Banks as per this clause. It is on account of these infirmities Government Pleader did not lay a stress for the adherence of conditions imposed in this circular nor made any effort to sustain its validity. The submission of Government Pleader that third respondent at no time insisted for compliance of direction contained in this letter, is recorded. In view of this statement, it is not necessary to probe further regarding its validity.

No material is made available to establish that this Circular was withdrawn by Commissioner prior to commencement of auction, as contended by Contesting respondent. Pendency of Writ Petitions in which validity of very same Circular is questioned, establish that there is no withdrawal by Commissioner, yet.

Likewise, it is unnecessary to decide receipt of interim order of this Court in Writ Petition No. 7770 of 1986 as learned Government Pleader submitted that third respondent had not received interim order before commencement of the auction.

RE: ATTEMPT TO PARTICIPATE IN AUCTION BY PETITIONER :

25. This takes me to next question viz., whether petitioner did attempt to participate in proceedings or was prevented by third respondent from participation. Plea of petitioner is that he went to Puttanna Chetty Town Hall to participate in the auction and offer his bid with demand drafts worth Rs. 57,75,000/- obtained from different branches of scheduled Banks in Bangalore and outside Bangalore. But, unfortunately, Deputy Commissioner declined to accept his offer as three of the demand drafts were not from Bangalore Branches.

Particulars of demand drafts obtained at various branches are set out in Annexure-E. Per contra, it is contended that petitioner never participated in the proceedings and has not established possession of demand drafts worth Rs. 57,75,000/-with him at the time of auction. Submission of Sri R.N. Narasimha Murthy is that petitioner has not furnished the details of demand drafts in main Petition, but has improved his case from stage to stage and ultimately furnished same in his reply. He also submitted that: proceeding drawn by Deputy Commissioner discloses acceptance of demand drafts from Branches other than Bangalore from other bidders and if only petitioner had offered demand drafts, whichever Bank it may be, third respondent would have permitted him to participate. He contended that a person who never participated nor attempted to participate cannot challenge the validity of proceeding or provisional acceptance.

Sub-clause(c) of Clause 1 of Notification states that officer receiving such deposit must issue receipts for earnest money deposit. Sub-rule(5) of Rule 11 states that bids offered shall be recorded in such list. A person not deposited earnest money in the manner specified in Sub-rule (6) of Rule 5 is not eligible for inclusion in list of intending bidders vide Sub-rule(1) read with Sub-rule (3)(b) of Rule 11. Sub rule (6) of Rule 5 of the Rules except stating that earnest money deposit should be in the form of demand draft on a scheduled Bank, does not specify that demand drafts should be from particular branches. In order to verify the correctness' Government Pleader was directed to make available original proceedings of Deputy Commissioner. Proceedings of Deputy Commissioner do not disclose acceptance of demand drafts from Branches other than Bangalore offered by other bidders-one relates to acceptance of bid of fourth respondent for various shops and other discloses names of participants and amount offered. Though provisions

referred to above, enjoin issue of receipts and recordings of earnest money deposit and bids offered in such list to establish things have been done in accordance with this procedure, records made available by Government Pleader do not establish this fact. After acceptance of highest bid earnest money deposited by unsuccessful bidders is returned, unless forfeited or adjusted, as per Rule 20 of the Rules and receipts issued as per Sub-clause (c) of Clause 1 of the notification at the time of deposit of demand drafts must necessarily be collected by the Officer. Neither these receipts are available in record nor produced to sustain their defence. Receipts issued to various intending bidders acknowledging earnest money deposit would have certainly established amount as well as Banks from which such demand crafts were purchased. It is too much to expect a citizen or to comprehend that Deputy Commissioner would conduct auction contrary to instructions given by Commissioner or would not comply circular instruction given by Chief Controlling Authority in all matters connected with the administration of Act that too when letter specifically states 'instructions may be followed strictly'. It is not possible to accept bare assertion of third respondent that demand drafts of branches other than Bangalore were also accepted from other bidders in the absence of primary evidence. Whole aim and object of prescribing procedure under these rules is that officer conducting auction must strictly adhere to and hold auction accordingly and deviation, if any, may invalidate the proceeding. Applying principles enunciated in Taylor v. Taylor, 1875(1) Ch. D. 426:

'Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.'

which has been accepted by Supreme Court in several cases, the last of which is in Ramachandra Keshav Adko v. Govind Joti Chavare and Ors., : [1975]3SCR839 , it must be held that refusal to accept earnest money deposit is not in accordance with these rules and failure to accept demand drafts purchased from Branches of scheduled Banks situate other than Bangalore, has prevented petitioner from participation at the there hold itself [vide Clauses (b) and (c) of Condition No. 4 of Notification extracted above]. Consequent upon refusal to accept demand drafts, as Earnest Money Deposit, his name has not been included in list of bidders.

Resultant position is that he has been denied an opportunity of offering his bid.

26. Contention of petitioner is that denial of such opportunity is denial of equal treatment or equality before law.

In support of the plea of inequality of treatment, reliance is placed on the decision of Supreme Court in Ramana v.I. A. Authority of India, : (1979)IILLJ217SC . Acceptance of tender of fourth respondent in that case for running a Second Class Restaurant and two Snack Bars at International Air Port at Bombay was challenged. The qualifications prescribed for submitting tender were that one must be a registered Second Class Hotelier having at least five years experience for putting up and running a Second Class Restaurant and two Snack Bars at this Air Port for a period of three years. Petitioner-appellant before Supreme Court - was, in fact, not a tenderer and he complained off inequality of treatment. Preliminary objection raised for maintainability is formulated thus :-

'It was contended on behalf of the 1st and the 4th Respondents that the appellant had no locus standi to maintain the Writ Petition since no tender was submitted by him and he was a mere stranger. The argument was that if the appellant did not enter the field of competition by submitting a tender, what did it matter to him whose tender was accepted ; what grievance could he have if the tender of the 4th Respondent was wrongly accepted. A person whose tender was rejected might very well complain that the tender of some one else was wrongly accepted, but, it was submitted, how could a person who never tendered and who was at no time in the field, put forward such a complaint This argument, in our opinion, is misconceived and cannot be sustained for a moment.'

Further, at para 12 after referring to a decision in Erusian Equipment and Chemicals Ltd. v.- State of West Bengal, : [1975]2SCR674 where issue involved was whether black-listing without providing an opportunity of hearing was good or not observed as follows :-

'The Learned Chief Justice said that when the Government is trading with the public 'the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions..... The activities of the

Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one, but if it does so, it must do so fairly without discrimination and without unfair procedure.' This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or Licenses or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant.'

27. In the instant case also grievance is that by insisting for production of demand drafts of branches situate in Bangalore, which is not contemplated either under the Act or Rules nor forms a condition in notification inviting tenders, demand drafts submitted by him have been illegally rejected and denied opportunity to participate in auction. No doubt, learned Government Pleader, in order to wriggle out of the situation submitted that condition incorporated in this letter was not insisted upon and bidders were permitted to offer demand drafts of any branch, as earnest money deposit. Since I have declined to accept that version for want of availability of best material, inevitable conclusion is that petitioner has been denied equality of opportunity.

RE : PUBLIC INTEREST LITIGATION :

28. Petitioners contend that though mode of disposal of right of retail vend of toddy and liquor is governed by Statute and Rules, still it is in the nature of a largess and there cannot be any arbitrary exercise of power in its disposal. Their submission is that contesting respondent is due to State, an extent of eight Crores of rupees, both, shop rental and sales-tax and rules do not permit State to enter into contract or part with the right of monopoly of right of retail vend of liquor in favour of such persons ; acceptance of bid of contesting respondent, ignoring mandate of Rule 7, is illegal and transgressing law with a view to favour respondent, who, undisputedly, is a defaulter.

Sri S.G. Sundaraswamy, Learned Counsel for contesting respondent, relying on certain observations of Supreme Court in Fertilizer Corporation, Kamgar Unionv. Union of India, AIR 1981 SC 344; Judges' case, : [1982]2SCR365 ; People's Union for Democratic Rights v. Union of India, : (1982)IILLJ454SC ; Bandhua Mukti Morchav.Union of India, : [1984]2SCR67 and State of H.P. v. Student's Parent Medical College, Shimla, : [1985]3SCR676 submitted that 'public interest litigation', as explained by Supreme Court is meant to ventilate grievances of vulnerable class, who, by reason of poverty, helplessness, socially or economically, incapable to avail of remedy and not meant to be used as a weapon or cudgel for personal grievance. He submitted that acceptance of bids/contracts is a day-to-day affair in State function and in almost all the departments viz., Public Works Department, Forest, Medical including Excise, contracts are accepted for supply or to get work done. Validity of acceptance of bids or contracts cannot be agitated in the form of a public interest litigation and can only be remedied by machinery provided under law. It is submitted that it is a clear case of abuse of process with oblique motive; it is not, as if every default on the part of State or public authority is justiciable; solely on this ground alone, Writ Petition is liable to be dismissed.

29. Public interest litigation is an innovation of new dimension of Article 14 of the Constitution of India. This type of litigation has not merely created a new look on legal luminaries, but also created awareness amongst citizens to high-light errors.

Instead of citing catena of decisions of Supreme Court, I would like to confine only relevant judgments which have bearing on the present cases. In Judges' case, : [1982]2SCR365 , Learned Chief Justice Bhagwati, after referring to observation of Lord Diplock in Rex v. Inland Revenue Commissioner, (1981)2 WLR 722 Lord Denning in Mc.Whirter cases and text book on 'Legal Control of Government' by H.W.R. Wade, has stated :

'It is not possible for the Court to lay down any hard and fast rule or any strait-jacket formula for the purpose of defining or delimiting 'sufficient interest'. It has necessarily to be left to the discretion of the Court.'

It is difficult to accept the contention that public interest litigation is confined to redressal of grievances mentioned above, after decision in Bottling case, ILR 1986 KAR 587 1986(1) K.L.J. 164 and High Court building demolition case, ILR 1984(2) KAR 631. Ratio of leading cases on the subject is summarised by Rama Gaze, J., in Rudraiah Raju and ors. v. State of Karnataka and ors., ILR 1986 KAR 587 = 1986(1) K.L.J. 164 as follows :

'The ratio of the decisions on which the Learned Counsel for the petitioners relied is that when there has been injury to the general public by violation of rule of law by arbitrary or capricious or mala fide exercise of the Government power and not to any determinate class or group of persons or individual, a member of the public having sufficient interest in the subject matter is entitled to challenge the decision before the Court.'

On appeal, Supreme Court affirmed the decision of this Court in Chaitanya Kumar v. The State of Karnataka and ors., : [1986]2SCR409 . Relevant portion of the Judgment reads thus:

'But, simultaneously, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ.'

Decision of this Court in High Court building demolition case, : [1972]3SCR784 is reversed on appeal by Supreme Court and Government was directed to consider afresh in the light of the observation made therein.

30. It is, no doubt, true, Supreme Court in State of Orissa v. Harinarayan Jaiswal, : [1980]3SCR1338 has stated :

'The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.'

but, whether a citizen can pinpoint loss of State finances that may be caused by such contracts or not, treating Court as Second Chamber is a debatable subject, over which I decline to express any opinion. Courts are aware of expanding social

and welfare activities of the State. It may be relevant in this context to notice what Supreme Court has said in Ramana's case, : (1979)IILLJ217SC :-

'To-day with tremendous expansion of welfare and social service functions increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power holders '

and further it is stated thus :-

'Licenses are required before one can engage in many kinds of business or work. The power of giving Licenses means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more business enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government.'

and in portion extracted at pages 58 to 60, it is held that State action must be in conformity with the standard of norm which is not arbitrary, irrational or irrelevant.

Supreme Court in Kasturi lal v. Slate of Jammu and Kashmir, : [1980]3SCR1338 dealing with similar situation held thus :-

'Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.'

Object of public interest litigation is explained in Bandhua Mukti Morcha v. Union of India, : [1984]2SCR67 thus:-

'When the Court entertains public interest litigation, it does not do so in a caviling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of.....The Court is thus merely assisting in the realisation of the constitutional objectives.'

31. It is, in the light of these decisions, petitioners assert that they have got locus standi to question the acceptance of bids offered by contesting respondent as illegal, arbitrary and in derogation of rules governing auction and when such illegalities are brought to the notice of the Court, it cannot shut its eyes. Finding recorded that contesting respondent suffered disqualification equally enures to the benefit of petitioners.

32. For the reasons stated above, I make the following order :-

i) Writ Petitions are allowed ;

ii) Impugned auction proceeding of Deputy Commissioner (Excise) Bangalore, dated 2-5-1986 accepting 4th Respondent's bid for parting of retail vend of toddy in Bangalore District is hereby quashed ;

iii) Acceptance of bids of fourth respondent for retail vend of toddy and arrack at places mentioned in schedule of second petitions are declared as null and void and first respondent is directed to forbear confirmation as interim order made on 21 6-1986 is being continued;

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